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**IN THE
COURT OF APPEALS OF INDIANA**

JANET PARFENOFF,
Appellant-Respondent,

vs.

DAWN PARFENOFF,
Appellee-Petitioner.

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No. 64A04-0711-CV-634

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Mark W. Coleman, Judge Pro Tempore and
The Honorable Katherine R. Forbes, Magistrate
Cause No. 64D02-0703-PO-2736

May 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Janet Parfenoff appeals the grant of Dawn Parfenoff's (Dawn's) request for an order of protection under the Indiana Civil Protection Order Act¹ (the CPOA). Upon appeal, Parfenoff presents the following restated issue for review: Was the evidence sufficient to support the granting of an order of protection under the CPOA?

We affirm.

The facts are that Dawn was formerly married to Steve Parfenoff, Parfenoff's son. Steve and Dawn had two children, who were approximately four and six years old at the time of the hearing for the protection order. Dawn had physical custody of the children. Steven lived with Parfenoff. Since the couple separated in 2003, Parfenoff often transported the children back and forth from Dawn's to her own house for visitation with their father. That arrangement had not always gone smoothly.

Selma Zordka babysat for the children during the day while Dawn was at work. On ten or fifteen separate occasions, Parfenoff showed up unannounced and uninvited, walked into Dawn's house, and announced that she was there to pick up the children. On the first such occasion, Zordka assumed Dawn had approved of the visit, and did not call Dawn to verify this. When Dawn later arrived home from work and the children were not there, Zordka explained where they were. Dawn instructed Zordka that henceforth, the children were not to go with Parfenoff, but instead were to remain with Zordka until Dawn arrived home from work. Those instructions notwithstanding, Parfenoff continued

¹ Ind. Code Ann. §§ 34-26-5-1 through -19 (West, PREMISE through 2007 1st Regular Sess.).

to periodically pick up the children in that manner and Zordka did not offer resistance when she did.

Parfenoff had come to Dawn's house several times late in the afternoon of March 23, 2007, "pounding on the door" and demanding to take the children. *Transcript* at 5. Parfenoff had also telephoned eight or nine times that day making the same demand. Dawn repeatedly declined to give Parfenoff permission to take the children. At approximately 8:30 p.m. that evening, Dawn's boyfriend, Joseph Trathen, was playing with the children while Dawn was in the bathroom. Trathen, who had never met Parfenoff, heard someone "pounding" on the front door. *Id.* at 30. After about three such "loud knocks", Trathen answered the door and encountered Parfenoff. *Id.* at 31. When Trathen opened the inside door, Parfenoff "grabbed" the screen door and attempted to enter the house. *Id.* at 30. Trathen pulled the screen door shut before Parfenoff could enter and locked it. Parfenoff stated, "I want my fucking grandkids." *Id.* Trathen responded that he would get Dawn. He went to the bathroom and spoke with Dawn, who could not come to the door immediately but told him the children were not to go with Parfenoff. When Trathen returned to Parfenoff at the front door and relayed that message, Parfenoff pointed her finger at Trathen and said, "I want my fucking grandkids now." *Id.* Trathen told Parfenoff not to point her finger at him and she responded, "I'll put my finger up your nose." *Id.* Trathen reiterated that the children were not going with Parfenoff and she threatened to call the police. Trathen observed that Dawn, who by then had come out of the bathroom and was standing in a hallway, was "very upset, hysterical, crying." *Id.* at 31.

Parfenoff left and drove to a nearby police station because “[she] had heard of a procedure called a health check or wellness check.” *Id.* at 49. Parfenoff claimed she told officials there, “this strange man, you know, came to the door blah, blah, blah and my son had sent me there to pick up the grandchildren and I don’t know who this man is and my grandchildren were crying so could you check it out[.]” *Id.* Shortly thereafter, five squad cars converged on Dawn’s home and officers surrounded her house and began banging on her doors. After Dawn spoke with police for “maybe five minutes” they determined that “everything was fine.” *Id.* Dawn then asked them to instruct Parfenoff to stop calling her and coming to her house; they said they would tell her that.

Two days later, on March 25, Dawn received another phone call from Parfenoff. During that call, Parfenoff did “a lot of screaming” at Dawn, called her a “bitch”, used “a bunch of cuss words”, and threatened that Dawn would never see her kids again. *Id.* at 13. When “it got to the point where [Parfenoff] was screaming and I couldn’t understand her”, Dawn hung up the phone. *Id.*

Two days later, Dawn filed a petition for a protective order and requested a hearing. In early April 2007, the trial court entered a temporary protection order. On August 10, 2007, the trial court conducted a hearing on Dawn’s petition for a permanent protective order. On August 16, the trial court entered an Order of Protection under I.C. § 34-26-5-9(a)(2), including the following findings of fact and order:

- a. The Petitioners have shown, by a preponderance of the evidence, that domestic or family violence, stalking, or a sex offense has occurred sufficient to justify the issuance of this Order.
- b. The Respondent represents a credible threat to the safety of the Petitioner or a member of the Petitioner’s household.

- c. The following relief is necessary to bring about a cessation of the violence or the threat of violence.

ORDER

1. The Respondent is hereby enjoined from threatening to commit or committing acts of domestic or family violence, stalking, or a sex offense against the Petitioner, DAWN PARFENOFF
2. The Respondent is prohibited from harassing, annoying, telephoning contacting, or directly or indirectly communicating with the Petitioner.

* * * * *

4. The Respondent is ordered to stay away from the residence, school, and/or place of employment of the Petitioner. The Respondent is further ordered to stay away from the following places that are frequented by the Petitioner and/or the Petitioner's family or household members[.]

Appellant's Appendix at 8. Parfenoff appeals that order.

We note initially that Dawn did not file an appellee's brief. When the appellee fails to submit a brief, we need not undertake the burden of developing an argument on the appellee's behalf. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065 (Ind. 2006). Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error. *Id.* "Prima facie error in this context is defined as, 'at first sight, on first appearance, or on the face of it.'" *Id.* at 1068 (citation omitted). We will affirm where an appellant does not meet this burden. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065.

Parfenoff contends the decision to issue an order of protection must be reversed because Dawn did not present sufficient evidence "establish[ing] that Janet Parfenoff committed acts of domestic or family violence, or stalking or sex offense against Dawn Parfenoff or a member of her household." *Appellant's Brief* at 3.

The Indiana Legislature has indicated that the CPOA shall be construed to promote (1) the protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; and (2) the prevention of future domestic and family violence. *Aiken v. Stanley*, 816 N.E.2d 427 (Ind. Ct. App. 2004). I.C. § 34-26-5-2(a) provides, “A person who is or has been a victim of domestic or family violence may file a petition for an order of protection against a: (1) family or household member who commits an act of domestic or family violence; or (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the petitioner.” In relevant part, “domestic or family violence” means, except for an act of self-defense, the occurrence of at least one of the following acts committed by a family or household member: “(1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member”; or “(2) [p]lacing a family or household member in fear of physical harm.” I.C. § 34-6-2-34.5; *see Aiken v. Stanley*, 816 N.E.2d 427. Moreover, I.C. § 34-26-5-9(f) provides, in relevant part:

A finding that domestic or family violence has occurred sufficient to justify the issuance of an order under [the CPOA] means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner’s household. Upon a showing of domestic or family violence by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence.

In this case, Dawn testified that Parfenoff had barged into her home, uninvited, on numerous occasions. On the day in question, Parfenoff repeatedly telephoned and showed up at Dawn’s house “very, very angry” and “out of control” and attempted to pick up Dawn’s children, despite Dawn’s unwavering refusal to permit it. *Transcript at*

32. When she did so, Parfenoff was angry and profane. Two days after the principal incident, Parfenoff telephoned Dawn and in a profanity-laced tirade threatened that Dawn would never see her children again. Dawn's testimony supports a conclusion that Parfenoff had placed Dawn in fear of physical harm. *See* I.C. § 34-6-2-34.5(2) ("domestic or family violence" means "[p]lacing a family or household member in fear of physical harm."); *see also Aiken v. Stanley*, 816 N.E.2d 427.

During the hearing on Dawn's petition, Dawn asserted on several occasions that she felt threatened by Parfenoff and was in fear of imminent bodily harm when Parfenoff attempted to break into her house on March 23, 2007. In fact, Parfenoff acknowledged not only that Dawn was afraid of her, but also that Dawn's fear did not bother her. Parfenoff displayed an argumentative and contentious nature at the proceedings that compelled the trial court at one point to warn Parfenoff that she "was working on [its] last nerve." *Transcript* at 54. Parfenoff's contempt for Dawn in particular was evident. Immediately after the court warned Parfenoff that she was approaching the limit of its tolerance, counsel asked, "This is the type of attitude you have with Dawn, isn't it?" *Id.* Parfenoff responded, "Probably the attitude I have with 99 percent of the people in the world." *Id.* At the end of the hearing, the court questioned Parfenoff further on that comment, i.e., "Why are you like this with 99 percent of the world?" *Id.* at 63. Parfenoff responded, "Because I don't like to put up with morons." *Id.* Finally, we note that Dawn's fear of Parfenoff was heightened by her knowledge that Parfenoff owns guns.

In summary, Dawn testified that she was afraid of Parfenoff. This fear was understandable in light of the evidence showing that Parfenoff regarded her former

daughter-in-law with contempt, used profanity and was often angry when interacting with Dawn, and refused to recognize Dawn's right to forbid Parfenoff entry into her (Dawn's) home. Dawn established by a preponderance of the evidence that Parfenoff placed her in fear of physical harm and therefore Dawn presented sufficient evidence to prove that Parfenoff committed at least one act of family or domestic violence within the meaning of I.C. § 34-6-2-34.5 and I.C. § 34-26-5-2. *See Aiken v. Stanley*, 816 N.E.2d 427. Accordingly, Parfenoff has failed to demonstrate prima facie error in the issuance of a protective order against her under the Indiana Civil Protection Order Act.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur.